

Appl. No. 09/918,223
Amtd. Dated June 6, 2003
Reply to Office Action of December. 9, 2002

REMARKS/ARGUMENTS

Claims 1, 6-9, 14 and 20 have been previously canceled. Claim 17 has been amended to replace the term "characterized by" with "comprising". Claims 18 and 19 have been amended to make them dependant upon Claim 17. No new matter has been added and no additional claim fee is due. Claims 2-5, 10-13, and 15-19 are pending in the application after the amendment. Entry of this Amendment is respectively requested.

OBJECTION

Claim 18 has been objected to because of a typographical error. Applicants are amending Claim 18 to make it dependent upon Claim 17 instead of Claim 18, thereby correcting the typographical error.

In view of the clarifying amendments, it is respectfully requested that objection to Claim 18 be reconsidered and withdrawn.

REJECTIONS

Rejection under 35 U.S.C. 103:

Claims 2-5, 10-13, and 15-19 are rejected under 35 U.S.C. §103 as being obvious over Pung et al., WO 99/25318 in view of Blieszner et al., US Patent No 5,648,083, and Muckenfuhs, US Patent No 5,332,118. It is contended in the Office Action that the claimed pre-moistened wipes are obvious in light of what is taught by Pung in view of Blieszner and Muckenfuhs. Applicants respectively traverse the rejection.

It is well known that to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. In re Rouffet 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir.1998). Second, there must be a reasonable expectation of success. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. See MPEP 2143.01; In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); and In re Fritch, 972 F.2d

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1260, 23 USPQ2d 1780 (Fed. Cir. 1992). Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. MPEP706.02(j); *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); and MPEP Section 2143 - Section 2143.03.

Firstly there is no motivation, teaching or suggestion in either Blieszner, Pung or Muckenfuhs to modify or combine the references teachings. Both Blieszner and Pung make no mention of any type of dispensers, let alone pop-up dispensers. And, as one of ordinary skill in the art would be aware there are a plethora of possible dispensers for a wipe. Some possible examples of types of dispensers include, but are not limited to, rolls, individual satchels, reach in dispensers and pop-up dispensers. There are a large number of variations of each of these different types of dispensers. There is no suggestion or teaching in either of Blieszner or Pung that any dispenser one is preferable any other. Consequently, there is no motivation, suggestion or teaching in either Blieszner or Pung for one of ordinary skill to combine either or both with Muckenfuhs, which is directed to one specific pop-up system. Similarly, in Muckenfuhs there is no motivation, teaching, or suggesting that any one lotion is any better than any other lotion. As a mater fact Muckenfuhs even teaches that a powder is on equal footing with any lotion. See Muckenfuhs column 10, lines 55-56. Muckenfuhs provides no motivation for one of ordinary skill to combine its teaching with that of either Blieszner or Pung, let alone the combination of Blieszner and Pung.

Secondly, there is no reasonable expectation of success in the combination of Pung in view of Blieszner and Muckenfuhs. The Office Action points to Column 5, lines 62-68 of Muckenfuhs as being evidence of teaching a portion of Applicants' invention. In reality, the referenced section is referring to Figure 1 which is apart of a larger section dealing with the problems associated in the prior art, namely Figures 1-4 and column 5, line 60 to column 7, line 17. Figure 4 and the associated disclosure, column 6, line 32 to column 7, line 17, illustrate and explain in much detail the problems associated with sheets which are Z-folded, interleaved, and placed in a pop-up dispensing container. This is very clear teaching of the problems

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associated with Z-folded, interleaved sheets and how they are unsuitable for reliable pop-up dispensing.

Muckenfuhs teaches a solution to this problem by changing the size, shape and/or orientation of the sheets to form an overlapping region having a non-uniform width. Muckenfuhs teaches that "...edge portions of adjacent towels are non-parallel when the individual towel sheets are interleaved within the package so as to form overlapping regions with non-uniform width.", column 1, lines 10 to 13. Muckenfuhs goes on to add that "While the advantages of the present invention may be obtained with towel sheets which are substantially moisture-free (dry), i.e., without any liquid cleansing agents or other liquids to moisten the towel sheets.." Column 10, lines 28 to 31. Clearly, Muckenfuhs teaches that Z-folded, interleaved sheets do not produce reliable pop-up dispensing and the only solution to provide reliable pop-up dispensing is not to use them. The assertion in the Office Action that Muckenfuhs teaches Z-folded, interleaved sheets as suitable for reliable pop-up runs contrary to the express teaching of Muckenfuhs, namely Z-folded, interleaved sheets don't work and interleaved sheets where "...edge portions of adjacent towels are non-parallel when the individual towel sheets are interleaved within the package so as to form overlapping regions with non-uniform width.", are the solution. Clearly, Muckenfuhs is expressly teaching away from the use of Z-folded, interleaved sheets.

However, the Office Action asserts that in spite of Muckenfuhs express teaching away from the use of Z-folded, interleaved sheets, we are to combine it anyway with the teachings of Blieszner and Pung. With all due respect this is wrong. A prior art reference must be considered in its entirety, i.e. as a whole, including portions that would lead away from the claimed invention. See MPEP 2141.02 and W.L. Gore & Associates, Inc. v. Carlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir 1983), *cert. denied*, 469 U.S. 851 (1984). Furthermore, it is improper to combine references where the references teach away from their combination. See MPEP 2145 and *In re Grasselli* 713 F.2d 731, 218 USPQ 769 (Fed. Cir. 1983). In its entirety Muckenfuhs is express teaching away from the use of Z-folded, interleaved sheets. See also United States v. Adams, 383 U.S. 39, 52, 148 USPQ 479, 484 (1966) ("[known] disadvantages in old devices which would

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naturally discourage search for new inventions may be taken into account in determining obviousness.”)

Turning to Blieszner and Pung, as noted previously, neither of these makes any mention of any type of dispensers, let alone pop-up dispensers. Instead, the Office Action asserts that, one of ordinary skill would arrive at Applicants invention by taking selected portions of teaching from Pung which relates to a wipe having a plurality of discrete, raised fibrous regions and improved cleaning and softness, see Pung Abstract, teaching from Blieszner on various components present in an aqueous lotion, and combine this with Muckenfuhs to arrive at Applicants' invention. However, as noted previously, the combination of these three references is ignoring the teaching away of Muckenfuhs. There is nothing in either of Blieszner or Pung relating to the problems associated with the use of Z-folded, interleaved sheets. Consequently, the only motivation, teaching or suggestion to one of ordinary skill in the combination of Pung, Blieszner and Muckenfuhs is that in Muckenfuhs, namely Z-folded, interleaved sheets do not provide reliable pop-up dispensing.

Consequently, one of ordinary skill can have no confidence of any chance of success at this combination of Pung, Blieszner and Muckenfuhs, assuming there was any motivation to make this combination in the first place. There is nothing in either Blieszner or Pung which provides motivation, teaching, or suggestion to one of ordinary skill that any of their compositional ingredients, let alone those used in Applicants invention, would provide a part of a solution to the use of Z-folded, interleaved sheets in pop-up wipes, especially in light of Muckenfuhs expressly teaching away from the use of Z-folded, interleaved sheets.

Furthermore, the Office Action has failed to account for any motivation, teaching, or suggestion provided in any of Pung, Blieszner and Muckenfuhs that would lead one of ordinary skill to ignore a Muckenfuhs solution to the problem, combine three unrelated references which have no motivation, teaching, or suggestion of the solution suggested in the Office Action. Instead the combination of these three unrelated references expressly teach away from the combination suggested in the Office Action. Simply put, one of ordinary skill has no expectation of any success by combining Pung, Blieszner and Muckenfuhs; instead in light of the teaching away in Muckenfuhs failure is the only reasonable expectation.

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Instead it appears the Office Action is attempting to use the "obvious to try" standard which has been consistently held improper. It is well settled that the question of obviousness under 35 U.S.C. §103 is not what the artisan could have done, but rather what would have been obvious for such a person to do. See Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 1 U.S.P.Q. 2d 1081 (Fed. Cir. 1986). The prior art references must provide some motivation for there selection by the artisan. Furthermore, there must always be a reasonable expectation of success to the selection and, as noted previously, no such reasonable expectation exists in the present situation. See In re Brouwer, 37 USPQ2d 1663 (Fed. Cir. 1996). See also MPEP 2143.01; In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In view of the foregoing remarks and the clarifying amendments, it is respectfully requested that rejection of Claims 2-5, 10-13, and 15-19 be reconsidered and withdrawn.

Conclusion.

In light of the amendments and remarks presented herein, Applicants respectively submit that Claims 2-5, 10-13, and 15-19 are allowable over the prior art of record or any combination thereof. In the event that issue remain prior to allowance of the noted claims, then the Examiner is invited to call Applicant's undersigned agent to discuss any remaining issues.

Respectfully submitted,

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